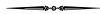


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A GUIDE TO PROTECTION FROM ABUSE AND HARASSMENT ACTIONS



STATE OF MAINE
JUDICIAL BRANCH



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I. GENERAL INFORMATION

The Protection Laws enable victims of domestic abuse or harassment to obtain both short-term emergency protection and, after hearing, long-term protection. These laws also enable persons accused of abuse or harassment to defend themselves, and to ask the court to modify (change) or vacate (terminate) any order against them. This booklet is to help people involved in protection cases to understand and use the court procedures available to them.

There are two types of protection cases—one covers abuse; the other covers harassment. Protection cases based on abuse differ in some important respects from protection cases based on harassment, although many procedures apply to both. Both cases are court lawsuits under the Maine Revised Statutes, Title 19-A, section 4001 through section 4011 (Abuse); Title 5, sections 4651 through 4660 and section 4681 (Harassment); and Titles 17 and 17-A (Maine Criminal Code). Thus, these procedures should be used only when court intervention is necessary to protect a person or property from real harm.

Section II of this booklet explains what is “abuse” and what is “harassment” under these laws, and how other terms are defined. Read this section carefully to see how your situation fits these definitions. Section III is written particularly for plaintiffs (those claiming to have been abused or harassed) and Section IV is written particularly for defendants (those who are accused of committing abuse or harassment). If the situation does not support bringing a protection case, a plaintiff may still ask the local police or sheriff’s department to issue a warning to the defendant similar to the formerly available “peace bond,” under the Maine Revised Statutes, Title 17-A, section 506-A. If the plaintiff wants such a warning, the clerk’s office may have the form. Otherwise, the plaintiff should contact his/her local law enforcement agency.

All parties (plaintiffs and defendants) should be aware that anyone who signs a court paper is stating that to the best of the signer’s knowledge, information and belief, the allegations or statements in the pleading are

true. If a party knowingly makes a false statement in a court pleading or at a court hearing, he/she may be held liable for any court expenses, including attorney's fees, incurred by the other party.

II. DEFINITIONS

The following definitions apply to the Protection Laws and procedures described in this handbook.

Abuse: Abuse is one or more of the following acts between “family or household members,” including such acts by a family or household member upon a minor child:

1. attempting to cause or causing bodily injury or offensive physical contact;
2. sexual assaults;
3. attempting to place or placing another person in fear of bodily injury by threatening, harassing or tormenting;
4. forcing a person to do things that the person has a right not to do, or forcing a person not to do things that the person has a right to do;
5. substantially restricting the movements of a person without lawful authority, by
 - a) removing a person from his/her home, business or school without consent or lawful authority;
 - b) moving a person a substantial distance, or
 - c) confining a person;
6. threatening a crime of violence that places the person in reasonable fear that the crime will be committed; or
7. repeatedly and without reasonable cause, following a person or being at or in the vicinity of the person's home, school, business or place of employment.

Adult: A person who is 18 years of age or older, or emancipated.

Defendant: The defendant is the person who is accused of abusing or harassing the plaintiff.

Family or Household Members: Family or household members are people who are married or who have been married to each other; people who are the birth parents of the same child; people who live together now or who used to live together as roommates or as though they were married; people who are current or former sexual partners; adults who are living in the same house and who are related by blood or marriage; and minor children of a household member when the defendant is an adult household member.”

Harassment: Harassment means any of the following:

1. three or more acts of intimidation, confrontation, physical force, or threat of physical force directed against any person, family or business, made with the intent of causing fear or intimidation, or damage to property, and which acts do in fact cause fear, intimidation or damage to property.

2. three or more acts made with the intent to deter the free exercise or enjoyment of any state or federal constitutional rights or privileges.

3. a single act of physical force or violence or threat of physical force or violence made with the intent to deter the free exercise of any state or federal constitutional rights or privileges; or based on discrimination prohibited under the state or federal constitution or laws.

4. a single act constituting murder, manslaughter, aiding or soliciting suicide, assault, criminal threatening, terrorizing, reckless conduct, gross sexual assault, kidnapping, criminal restraint, criminal restraint by a parent, harassment, incest, arson, violation of privacy or criminal mischief, pursuant to Titles 17 and 17-A of the Maine Revised Statutes (Maine Criminal Code).

5. a course of conduct that constitutes stalking, pursuant to the Maine Criminal Code, Title 17-A, Section 210, Maine Revised Statutes.

Minor: Any individual who has not yet attained the age of 18, unless emancipated.

Parties: The plaintiff and the defendant are the parties.

Plaintiff: The plaintiff is the person who is complaining about abuse; or the person or business complaining about harassment.

III. PROCEDURES APPLICABLE TO A PLAINTIFF IN A PROTECTION CASE

A. Who Can Sue. In a case based on **abuse** by a family or household member, as defined in this booklet, the following persons may sue:

- An adult on his/her own behalf;
- An adult on behalf of a minor child for whom that adult is responsible;
- An emancipated minor;
- An unemancipated minor, if represented by an adult parent or guardian.

In a case based on **harassment**, as defined in this booklet, the following persons or entities may sue:

- An adult on his/her own behalf;
- An adult on behalf of a minor child for whom that adult is responsible;
- An emancipated minor;
- An unemancipated minor, if represented by an adult parent or guardian;
- A family or business.

B. Who Can Be Sued. In a case based on **abuse**, as defined in this booklet, the following persons may be sued:

1. An adult or emancipated minor who:

- is or has been married to the plaintiff;
- lives or lived with the plaintiff as if married to the plaintiff;
- is a birth parent of a biological child of the plaintiff;
- is a blood relative and currently lives with the plaintiff;
- lives or lived in the same household with the plaintiff;
- is or has been a sexual partner of the plaintiff.

2. An unemancipated minor, so long as represented by an adult parent or guardian, who:

- lives or lived with the plaintiff as if married to the plaintiff;
- is the birth parent of a biological child of the plaintiff;
- is a blood relative and currently lives with the plaintiff;
- is or has been a sexual partner of the plaintiff;
- lives or lived in the same household with the plaintiff.

In a case based on **harassment**, as defined in this booklet, the following person or entities may be sued:

- An adult or emancipated minor;
- An unemancipated minor, if represented by an adult parent or guardian;
- A family or business.

C. Where. Go to the District Court where either the plaintiff or the defendant live, or in the event the plaintiff has left his/her residence to avoid abuse, go to the District Court where the plaintiff's new residence is located.

D. Cost. There is no fee to file the case if based on abuse. A \$30.00 fee applies if the case is based on harassment. If the plaintiff cannot afford the \$30.00 fee, he/she may ask the clerk for the "Motion to Proceed Without Payment of Fees" form. There is no charge for forms or to get copies of papers that are filed in a protection case.

E. How To File the Complaint and Related Forms. There are two ways you can get and complete the Complaint which starts a protection action. The first is to go to the clerk's office in the District Court, and ask the clerk for either a Protection from Abuse Complaint or a Protection from Harassment Complaint. The clerk will provide the plaintiff with the appropriate complaint form, which the plaintiff may complete either at the courthouse, the local Domestic Violence project, or anywhere else. The clerk is available to answer questions regarding the form. However, the clerk is not permitted to give legal advice.

The second way is to access court forms through the World Wide Web. If you have a computer and internet connection, set your web browser to either of the following websites:

<http://www.mainebar.org/pages/forms.html>

<http://www.ptla.org/forms.htm>

If you do not have a computer, go to a local library or other site with a public access computer and ask the librarian to help you get to the above web pages. The computer will ask you a series of questions, and will then generate a completed complaint and other necessary forms which you can then print, sign (in front of a notary public or court clerk) and file with your local court.

In both abuse and harassment cases, a party's address and other identifying information can be kept confidential if the party fills out an affidavit for confidential address stating under oath that disclosure of the information would jeopardize the health, safety or liberty of the party or a child. In that case, the clerk's office will maintain the confidentiality of the address and will use it only to contact the party. The court can order the information disclosed only after a hearing, and only if the court decides that disclosure is in the interest of justice.

In any protection case, confidential or not, the plaintiff must inform the clerk's office of any change of address subsequent to the filing of the complaint.

Fill out the complaint form completely. Be as specific as possible in describing the abuse or harassment. If the complaint is based on **abuse**, do not rely on conclusions such as, “The defendant abused me,” or “The defendant threatened me.” Instead, include specific allegations such as: “On June 20, my ex-husband John Doe slapped me on the face. He then kicked me on the legs causing bruises. The next day he told me he would kill my son if I didn’t obey him.” If the complaint is based on or includes allegations of **abuse to a child**, the complaint should include the child’s name and state that the complaint is brought, in whole or in part, on behalf of the child.

If the complaint is based on **harassment**, do not rely on conclusions such as: “The defendant harassed me.” Instead, include specific allegations such as: “My boyfriend’s new girlfriend Mary Doe has called me 40 times in the last few weeks.” If the complaint is based on or includes allegations of **harassment of a child**, the complaint should include the child’s name and state that the complaint is brought, in whole or in part, on behalf of that child.

If immediate protection is necessary, read section III(G) below, “Temporary Protection Orders.” If no immediate protection order is necessary, sign the complaint in the presence of the clerk, a notary, or an attorney, and request the clerk to file the complaint. The clerk will complete a Summons and set a date for final hearing when the court’s schedule permits. Final hearing in an abuse case must be held within 21 days of when the complaint was filed.

The plaintiff must also complete a Service Information Sheet that provides information about the defendant that can be used to serve the defendant with any pleadings and orders. The plaintiff should return the Service Information Sheet together with the complaint to the clerk.

In the event the complaint is based on abuse, the plaintiff has minor children, the defendant is the parent of any of plaintiff’s minor children, and no child support order already exists, the plaintiff must also complete a Child Support Affidavit before the final hearing.

Make arrangements for service in accordance with section III(H) below, “Service of the Complaint and Related Forms.”

F. Relief Available. Certain kinds of relief are available in an order of protection at or after the court hearing, depending upon whether the complaint is based on **abuse** or **harassment**. The plaintiff should be prepared to request specific and appropriate relief based on the circumstances of his/her case and the list below.

In an **abuse** case, the order of protection may:

- Order the defendant to refrain from threatening, assaulting, molesting, harassing, attacking, or otherwise abusing any minor children residing in the plaintiff's household;
- Prohibit the defendant from using physical force against the plaintiff
- Grant exclusive possession of the family residence to either party (or by agreement order a party to provide alternate housing for the other party);
- Prohibit the defendant from entering the family residence;
- Prohibit the defendant from possessing or using a firearm or other dangerous weapon;
- Order a division of the parties' household goods and personal property
- Award temporary custody of minor children or temporary visitation rights with minor children;
- Order the payment of temporary support for one party, or any child in that party's custody;
- Order one party to make child support payments to the state.
- Require the defendant to receive counseling;
- Order the defendant to terminate any life insurance policy on the plaintiff's life

In addition, in both **abuse** and **harassment** cases, the protection order may:

- Prohibit or limit the defendant from having contact, direct or indirect, with the plaintiff and any children on whose behalf the complaint has been brought. Direct contact means any contact by any means (including but not limited to in person contact, telephone calls, letters and notes, e-mail messages, etc.) directly by the Defendant to the Plaintiff. Indirect contact means any effort by the defendant to contact the plaintiff through other people (such as having them give messages or forward letters or e-mail to the plaintiff);
- Order the defendant to refrain from threatening, assaulting, molesting, harassing, attacking, or otherwise abusing the plaintiff;
- Prohibit the defendant from entering the plaintiff's residence;
- Prohibit the defendant from following the plaintiff, or being at or in the vicinity of the plaintiff's home, school, business or place of employment, without reasonable cause;
- Order the defendant not to take, damage or destroy the plaintiff's property
- Order payment of monetary compensation to the plaintiff for losses suffered as a direct result of abuse or harassment;
- Order one or both parties to pay court costs or reasonable attorney's fees.

In both types of case, a permanent or final order of protection can also include any additional orders that the court considers necessary or appropriate.

In completing the complaint, the plaintiff must be certain to ask for all relief that he/she seeks.

Note: If the Court enters a Protection from Abuse order, possession of a firearm by the defendant is a separate violation of both state and federal law if the order includes either or both of the following:

- a finding that the defendant represents a credible threat to the physical safety of the plaintiff or a minor;
- an order prohibiting the defendant from the use, attempted use, or threatened use of physical force against the plaintiff or a minor.
- an order prohibiting the defendant from assaulting, attacking or abusing the plaintiff or a minor.

In addition, a parent's willful misuse of a Protection from Abuse process in order to gain tactical advantage in a divorce or paternity action may be considered by the court in that divorce or paternity action when deciding upon the allocation of parental rights and responsibilities.

G. Temporary Protection Orders. A plaintiff in immediate danger of abuse or harassment may request a temporary protection order by checking the appropriate box on the complaint form. Sign the complaint in the presence of the clerk, notary or an attorney. The clerk will then present the complaint and the request for a temporary protection order to a judge when one is available. The plaintiff should wait at the courthouse until the judge is available. If a judge will not be available there, the clerk will make alternative arrangements. These may include going to another court or use of telephones and fax machines to provide a review of the complaint. The plaintiff should follow the clerk's instructions in these cases.

If the judge is satisfied that the allegations set forth in the complaint justify a temporary protection order, the judge may sign the order. In the case of a complaint based on **abuse**, if the judge is not satisfied or has questions regarding the allegations in the complaint, the judge will interview the plaintiff. If granted, a temporary order of protection remains in effect until any of the following happens: a final order of protection is served on the defendant; an order modifying the temporary order is entered; an order vacating (terminating) the temporary order is entered. The plaintiff must appear at the court on the hearing date. In an abuse case, the temporary order can direct the defendant not to possess any firearms or dangerous weapons, if the complaint demonstrates abuse involving a firearm or dangerous weapon, or shows a heightened

risk of immediate abuse to the plaintiff or a child. If the temporary order prohibits possession of dangerous weapons other than firearms, the order will specify what weapons are prohibited. A defendant prohibited from possession of firearms or other dangerous weapons must turn over any prohibited items to a law enforcement officer or other person within the time stated in the temporary order (24 hours or less after the temporary order is served on the defendant).

The relief available in a temporary order of protecting is more limited than the relief available in a protection order issued after service on the defendant and notice of hearing.

In an abuse case, the temporary order can:

- award temporary exclusive parental rights and custody of children, and
- require the defendant to turn over firearms to a law enforcement officer or third party.

In both abuse and harassment cases, the temporary order can:

- prohibit the defendant from having direct and indirect contact with the plaintiff or a minor;
- prohibit the defendant from restricting the plaintiff's liberty;
- prohibit the defendant from threatening, assaulting, attacking, molesting, harassing or otherwise disturbing the peace of the plaintiff;
- prohibit the defendant from entering the plaintiff's residence;
- prohibit the defendant from following the plaintiff or a minor, or going to the plaintiff's home, workplace or school without reasonable cause, and
- prohibit the defendant from taking, damaging or destroying the plaintiff's property.

Note: Unless a temporary order for protection explicitly prohibits contact between the plaintiff and defendant, such an order does not prohibit such contact, provided such contact is neither abusive nor harassing.

A temporary order must be served on the defendant before it is effective. However, if a defendant is on actual notice of a protection order, violation is a crime whether or not the order has been served. Usually, the complaint and all related papers are also served at the same time as the temporary order. Generally, the court will arrange service of a temporary order on an in-state defendant. To speed up service, however, the court may ask the plaintiff to take the court papers to the police department or sheriff's office. The plaintiff should call the sheriff's department or police department to find out when the papers are served on the defendant.

If the defendant is not in Maine, the plaintiff must take responsibility for service on the defendant. The plaintiff may want to telephone the appropriate law enforcement agency in the out-of-state county where the defendant is located and inquire whether that department will serve the temporary Order, Complaint, Summons and other related papers. If the law enforcement agency declines, the plaintiff should ask for advice or suggestions. The law enforcement agency may assess a service fee for service, for which the plaintiff will be responsible. A temporary order must be attested by the appropriate Maine court, and, to be effective under Maine law, served in hand by the out-of-state law enforcement agency.

The defendant has a right to request the court to dissolve a temporary order on at least 48 hours notice to the plaintiff, unless a shorter time is set by the judge. If defendant files a motion to dissolve, a hearing on the motion is held. The plaintiff must prove through evidence any facts alleged in the complaint that the defendant has disputed by affidavit (sworn statement). The judge may decide to consolidate (combine) the hearing on defendant's motion to dissolve with the final hearing on the plaintiff's complaint. Whether or not consolidated with final hearing, a hearing on a motion to dissolve follows the procedures set forth in section III(J) below, entitled "The Final Hearing."

If the judge decides not to issue a temporary order, the plaintiff may decide not to proceed with the case. Unless the case is dismissed at the request of the plaintiff, it will be scheduled for final hearing. An abuse case must be scheduled for hearing within 21 days of when the complaint is filed with the court. A harassment case will be scheduling for hearing when the court's schedule permits.

H. Service of the Complaint and Related Forms. In the event no temporary order is issued, the plaintiff is responsible for arranging service of the Complaint, Summons and related papers on the defendant. The court clerk will complete the Summons form and provide the plaintiff with three copies of the Summons, three copies of the Complaint and any related forms, and one copy of the Service Information Sheet. The plaintiff should keep one copy of the Summons, and one copy of the Complaint and any related forms. The plaintiff should then take all other papers to the police or sheriff's department and ask that the documents be served on the defendant as soon as possible. The police or sheriff's department may assess a service fee for which the plaintiff will be responsible. Under special circumstances, the court may waive the fee for service.

If the defendant is not in Maine, the plaintiff must arrange for service in the state where the defendant is located. The plaintiff may want to contact a local law enforcement agency in the out-of-state county where the defendant is located to request service in a manner that complies with the least restrictive procedure under Maine law.

I. If the Plaintiff Changes His/Her Mind. If the plaintiff decides not to proceed with the case prior to the final hearing, he/she should inform the clerk as soon as possible. The clerk will ask the plaintiff to put any request to dismiss the case in writing. The judge may want to speak with the plaintiff before dismissing the case.

J. The Final Hearing. *The plaintiff must attend the final hearing.* All final protection hearings are public. The plaintiff is responsible to remember the court date set for the final hearing. Even if the defendant is not yet served, if the plaintiff does not appear on the hearing date, the case is likely to be dismissed. In a genuine emergency, the plaintiff should inform the court as soon as possible and may ask for a continuance (postponement). The judge will decide whether to continue the hearing.

At the hearing, the plaintiff has the burden to prove that the defendant abused or harassed the plaintiff or any children for whom the plaintiff is responsible. A plaintiff with personal knowledge usually must testify at the hearing. If the action is brought on behalf of a child, and if the adult plaintiff has no personal knowledge of the events that support the claim of abuse or harassment, the child will probably be required to testify. The plaintiff may bring other witnesses to support his/her case, may subpoena witnesses, and may hire a lawyer if he/she wishes. The plaintiff may bring a friend or an advocate from the local Domestic Violence project to the hearing.

The defendant has a right to be at the hearing and must have notice of the date and time of the hearing. The defendant has a right to have a lawyer, and may testify and bring witnesses to testify in his/her behalf. If the defendant does not appear, the judge may grant an order without a hearing.

At the hearing, the judge will first ask the plaintiff to present evidence and witnesses to support his/her case. The judge will rule on any objections. Then the defendant will have an opportunity to respond and to present witnesses. Both parties have the right to cross-examine each other or any witnesses, but the judge will determine how it is done. After hearing all the evidence and all the witnesses, the judge will make a decision on all issues.

In an **abuse** case, if the plaintiff and defendant are the parents of minor children, both the plaintiff and the defendant must have completed a child support affidavit before the hearing. At the hearing, the judge

may ask both the plaintiff and the defendant for any information regarding the income of either. If a protection from abuse order is granted, the judge will also probably order child support, so long as there is not already a child support order in existence.

At the final hearing, the plaintiff should be prepared to justify any relief he/she may have requested in the protection complaint. If the plaintiff is seeking money damages or restitution from the defendant, the plaintiff should be prepared to state exactly the kind and amount of damage caused by the defendant. If plaintiff is requesting that the defendant pay money for the plaintiff's support, plaintiff must be prepared to give the judge specific information about his/her income and expenses.

K. Orders By Consent Without Hearing. At the outset, the judge may ask each party whether the party is willing to consider a protection order by consent or agreement, instead of having a contested hearing. Consent orders can include all the protection that an order issued after a contested hearing would provide. Violation of a consent order can be prosecuted, just as in the case of an order issued after hearing. However, before giving up the right to a hearing, a plaintiff should assure that a consent order is adequate in terms of protection and other relief. Also, consent orders are often issued without any finding of whether the defendant committed abuse or harassment. Normally, consent orders are worked out by the judge speaking to the parties, or through the use of go-betweens (often lawyers or domestic violence advocates). There should not be direct discussion or contact between the parties, either before coming to court or at the court, especially if a temporary order prohibiting contact is in effect.

L. If a Final Protection Order is Issued. A final protection order may last up to two years if issued in a protection from abuse case, one year if issued in a protection from harassment case. Both the plaintiff and the defendant should read any final order carefully. Any protection order remains in effect until it expires, unless it is terminated or changed by the court before it expires. The only way a protection order can be changed is by a judge (or a case management officer in cases involving

children). No one else, including the plaintiff, has authority to change the order or permit the defendant to violate the order. For example, if the defendant has been ordered not to go to the plaintiff's house, the defendant violates the order if he/she goes to the plaintiff's house, even if the plaintiff has invited him/her. Remember: Only the court can change the order.

The order will state specifically what the defendant is prohibited from doing and what the defendant is required to do. If the defendant violates the order, the plaintiff should call the police and inform the police regarding the terms of the protection order. It is a crime for the defendant to violate certain portions of the protection order. The plaintiff should keep a copy of the order with him/her at all times.

M. If Plaintiff Seeks to Have Order Modified or Terminated. If the plaintiff wants the order changed or terminated, the plaintiff must file with the court clerk a written motion to modify or terminate. A protection order may be modified if the plaintiff can show a substantial change in circumstances since the entry of the final order. The clerk will give the plaintiff a time and date for the hearing on the plaintiff's request to modify or terminate. The defendant must be notified as to any such motion and has a right to be present. The plaintiff has the responsibility for service of the written motion and notice of hearing on the defendant. The hearing on plaintiff's motion to modify or terminate is governed by the same procedures set forth in III(J) above, entitled "The Final Hearing."

N. If Plaintiff Wants the Protection Order Extended. The protection order will include the expiration date. The maximum period of time that a protection from abuse order can last is two years, and the maximum period of time that a protection from harassment order can last is one year. If the plaintiff believes that extension of the order will be necessary, the plaintiff must file with the court a request to extend the protection period. To avoid the risk of a gap in protection, the motion should be filed 30 days before the expiration date.

The plaintiff should go back to the same court that issued the order and ask for the form called Motion to Extend. The plaintiff should complete that form, give it to the clerk, and complete another Service Information Sheet. The clerk will set a hearing date and the plaintiff must be present at that hearing. The plaintiff must notify the defendant of the hearing date, and the defendant has a right to be present at the hearing. Service on the defendant and procedure at the hearing is governed by the sections III(H) and III(J) above.

IV. PROCEDURES APPLICABLE TO A DEFENDANT IN A PROTECTION CASE

The defendant has a right to defend him/herself, to contest any allegations set forth in the Complaint, to present evidence on his/her behalf, to ask the court to dissolve any temporary order, or to ask the court to terminate or modify any final order.

The defendant has a right to receive a copy of the complaint and related papers, and any order. A court order is not effective until the defendant is served with the order. However, if a defendant is on actual notice of a protection order, violation is a crime whether or not the order has been served. The defendant is entitled to notice of any hearing. If the court has issued a temporary order and the defendant asks the court to dissolve that order, he/she is entitled to a hearing upon at least 48 hours notice to the plaintiff, unless a shorter time is set by the judge.

Note: If the defendant believes that the plaintiff has abused or harassed him/her, the defendant must file a separate protection complaint and request for relief against the plaintiff, following the procedures set forth in section III above, “Procedures Applicable to a Plaintiff in a Protection Case.” The defendant may not ask for protection against the plaintiff as part of his/her defense in the plaintiff’s case.

A. If a Temporary Order is Issued and Served: After service of any temporary order, the defendant may file with the court a written request to dissolve the order. The defendant has a right to a hearing on his/her motion to dissolve upon at least 48 hours notice to the plaintiff, unless a shorter time is set by the judge. If the defendant brings a motion to dissolve, he/she should ask the court for a hearing date and time, and should arrange for service on the plaintiff of the written motion to dissolve and the notice of hearing. If the plaintiff's current address is confidential, the clerk will arrange service. In the event the defendant arranges service, he/she should contact an individual such as a sheriff's deputy to serve the plaintiff.

On or before the hearing date, the defendant must file an affidavit stating why or how the plaintiff's complaint is inaccurate. The judge may combine any dissolution hearing with an accelerated final hearing on the plaintiff's underlying complaint for protection. In either event, the hearing is conducted pursuant to the procedures set forth in IV(B) below, "The Final Hearing."

In an abuse case, the temporary order can direct the defendant not to possess any firearms or dangerous weapons, if the complaint indicates abuse involving a firearm or dangerous weapon, or a heightened risk of immediate abuse to the plaintiff or a child. If the temporary order prohibits possession of dangerous weapons other than firearms, the order will specify what weapons are prohibited. A defendant prohibited from possession of firearms or other dangerous weapons must turn over any prohibited items to a law enforcement officer or other person within the time stated in the temporary order (24 hours or less after the temporary order is served on the defendant). If the defendant chooses to turn over the prohibited items to a person other than a law enforcement officer, the defendant must file within 24 hours a statement identifying that person and listing all items turned over to the person. That statement may be filed with either the court or a local law enforcement agency.

If a temporary order of protection from abuse prohibits possession of firearms or dangerous weapons, the defendant may move to dissolve that portion of the order and the court will hold a hearing as soon as the court's schedule permits. The court will issue a written decision within 24 hours of that hearing.

The defendant should read any temporary order carefully. Unless and until the temporary order is vacated, the defendant must obey that order. Otherwise, the defendant is subject to arrest and criminal charges. The plaintiff cannot change the terms of any temporary order and cannot give the defendant permission to violate any terms of the temporary order. If the order states that the defendant is prohibited from entering the family residence, the defendant will be charged with a crime if he/she enters the family residence even if the plaintiff has invited the defendant to enter. Violation of a temporary order is a Class D crime that carries penalties up to 364 days in jail and/or a fine up to \$2000.00.

Note: Unless a temporary protection order explicitly prohibits contact between the plaintiff and the defendant, such an order does not prohibit contact, so long as such contact is not abusive or harassing.

B. The Final Hearing: The defendant is under no obligation to file a formal written response to the plaintiff's protection complaint. The Summons includes the date, time and place of the final hearing on the protection case.

The defendant has a right to be at the hearing and must get notice of the date and time of the hearing. The defendant also may hire a lawyer, may testify and bring witnesses to testify on his/her behalf, and may subpoena witnesses.

If the defendant wishes to say anything about the case, he/she must be at the hearing. If the defendant is at the hearing and the plaintiff does not show up, the case against the defendant is likely to be dismissed. If the plaintiff is at the hearing and the defendant is not

there, the judge will probably issue a protection order for the plaintiff and against the defendant. The above is also true if the defendant files a motion to dissolve but fails to appear at the dissolution hearing.

At the hearing, the plaintiff has the burden to prove that the defendant abused or harassed the plaintiff or any children for whom the plaintiff is responsible. A plaintiff with personal knowledge usually must testify at the hearing. If the action is brought on behalf of a child and if the adult plaintiff has no personal knowledge of the events that support the claim of abuse or harassment, the child will probably be required to testify. The plaintiff may bring other witnesses to support his/her case, may subpoena witnesses, and may hire a lawyer if he/she wishes.

At the hearing, the judge will first ask the plaintiff to present evidence and witnesses to support his/her case. The judge will rule on any objections. Then the defendant will have an opportunity to respond and to present witnesses. Both parties have the right to cross-examine each other or any witnesses, but the judge will determine how it is done. After hearing all the evidence and all the witnesses, the judge will make a decision on all issues.

In an **abuse** case, if the plaintiff and defendant are the parents of minor children, both the plaintiff and the defendant must have completed a child support affidavit before the hearing. At the hearing, the judge may ask both the plaintiff and the defendant for any information regarding the income of either. If a protection from abuse order is granted, the judge will also probably order child support, so long as there is not already a child support order in existence.

The plaintiff's complaint may have asked for certain relief, described in section III(F) above. The defendant should review the plaintiff's request and this list prior to the hearing and be prepared to explain why any particular form of relief is inappropriate or suggest an arrangement that is appropriate, based on the parties' circumstances and the circumstances of their children, if applicable.

C. Orders By Consent Without Hearing. At the outset, the judge may ask each party whether the party is willing to consider a protection order by consent or agreement, instead of having a contested hearing. Consent orders can be granted without any finding on whether the defendant committed abuse or harassment. However, before giving up the right to a hearing, a defendant should understand that a violation of a consent order can result in the defendant being prosecuted or held in contempt of court, just as in the case of a protection order issued after a hearing. Normally, consent orders are worked out by the judge speaking to the parties, or through the use of go-betweens (often lawyers or domestic violence advocates). There should not be direct discussion or contact between the parties, either before coming to court or at the court, especially if a temporary order prohibiting contact is in effect.

D. If a Final Protection Order is Issued: The defendant should read any protection order carefully. The order will state specifically all prohibitions or requirements that apply to the defendant. Violation of certain parts of a protective order is a Class D crime, punishable by up to 364 days in jail and a \$2,000 fine. In certain cases, a violation may be a Class C felony, or may be contempt of court. If the defendant is ordered to stay away from plaintiff's residence and the defendant goes to the residence, the defendant will be arrested and charged with violating a protection from abuse order. The plaintiff cannot give the defendant permission to violate the order or vary its terms. Only a judge can change the order.

If a final order of protection from abuse prohibits the defendant from possessing firearms or dangerous weapons, the defendant will also be ordered to turn over firearms and prohibited weapons to a law enforcement officer or other person within the time stated in the order (24 hours or less after the temporary order is served on the defendant). If the defendant chooses to turn over the prohibited items to a person other than a law enforcement officer, the defendant must file within 24 hours a statement identifying that person and listing all items turned over to the person. That statement may be filed with either the court or a local law enforcement agency. If the court later finds probable cause to believe the defendant

has not turned over all firearms and prohibited weapons, the court can authorize a search warrant and seizure of any prohibited items found.

Note: If the Court enters a Protection from Abuse order, possession of a firearm by the defendant is a separate violation of both state and federal law if the order includes one or both of the following:

- a finding that the defendant represents a credible threat to the physical safety of the plaintiff, or a minor child
- an order prohibiting the defendant from the use, attempted use, or threatened use of physical force against the plaintiff
- an order prohibiting the defendant from assaulting, attacking or abusing the plaintiff or a minor

In addition, a parent's willful misuse of a Protection from Abuse process in order to gain tactical advantage in a divorce or paternity action may be considered by the court in that divorce or paternity action when deciding upon the allocation of parental rights and responsibilities.

E. If Defendant Seeks To Have Order Modified or Terminated:

If the defendant wants the order changed or terminated, defendant must file with the court clerk a written motion to modify or terminate. A protection order may be modified if the defendant can show a substantial change in circumstances since the entry of the permanent order. The clerk will give the defendant a time and date for the hearing on the defendant's request to modify or terminate. The plaintiff must be notified as to any such motion and hearing, and has a right to be present. The defendant has the responsibility for service of the written motion and notice of hearing on the plaintiff. The hearing on defendant's motion to modify or terminate is governed by the same procedures set forth in IV(B), above, entitled "The Final Hearing."

The plaintiff also may file a motion to modify or vacate the order, in which case the defendant is entitled to notice and may defend in a manner consistent with the procedures set forth above.

F. If Plaintiff Wants the Protection Order Extended: The protection order will include the expiration date. The maximum period of time that a protection from abuse order can last is two years, and the maximum period of time that a protection order from harassment can last is one year. The plaintiff must file with the court a Motion to Extend, at which time the clerk will set a hearing date. The defendant is entitled to notice of the hearing date and any copies of a Motion to Extend and related forms or documents. The defendant has a right to be present at the hearing and to present arguments against extension of the protection order, consistent with the procedures set forth above.

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